

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NICOLE ZICCARELLI,)	
)	
Plaintiff,)	Civil Action No. 2:20-cv-1831-NR
v.)	
)	
THE ALLEGHENY COUNTY BOARD)	
OF ELECTIONS, RICH FITZGERALD,)	
in his official capacity as a Member of the)	
Allegheny County Board of Elections,)	
SAMUEL DEMARCO, in his official)	
capacity as a member of the Allegheny)	
County Board of Elections, BETHANY)	
HALLAM, in her official capacity as a)	
member of the Allegheny County Board)	
of Elections, and KATHY BOOCKVAR,)	
in her official capacity as the Secretary of)	
the Commonwealth of Pennsylvania,)	
)	
Defendants.		

INTERVENORS' RESPONSE TO PLAINTIFF'S STATUS REPORT

Intervenors, the Pennsylvania State Democratic Party and James Brewster, a candidate for Senator in Pennsylvania's 45th Senatorial District (the "Intervenors"), by and through counsel, file this Response to Plaintiff's Status Report:

1. Plaintiff's Amended Complaint is fundamentally flawed and should be dismissed with prejudice. It is nothing more than a collateral attack of a Pennsylvania Supreme Court holding in federal district court.

2. Intervenors intend to file a Motion to Dismiss Plaintiff's Amended Complaint with prejudice on four separate, independent, and adequate grounds: 1) this Court lacks subject-matter jurisdiction pursuant to the *Rooker-Feldman* doctrine (*Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983)); 2) Plaintiff lacks standing to bring her challenge because any injury is self-imposed by her conduct before the Westmoreland

County Board of Elections (a matter of public record); 3) Plaintiff's claims are moot; and 4) Plaintiff's Amended Complaint simply fails to state a cause of action upon which relief can be granted.

3. Intervenor's propose that they file their Motion to Dismiss and supporting Brief on Friday, December 18, 2020, with any response by Plaintiff due on Monday, December 21, 2020, and with any reply due Tuesday December 22, 2020.

4. There is no need for any discovery as this case can be decided by motions.

5. Intervenor's propose that any theoretical additional deadlines be contemplated after the resolution of Intervenor's Motion to Dismiss.

Respectfully submitted,

DENTONS COHEN & GRIGSBY P.C.

Dated: December 12, 2020
3485131.v1

By /s/ Clifford B. Levine
Clifford B. Levine
Pa. Id. No. 33507
Alex M. Lacey
Pa. Id. No. 313538
Kyle J. Semroc
Pa. Id. No. 326107

625 Liberty Avenue, 5th Floor
Pittsburgh, PA 15222-3152
(412) 297-4900

ATTISANO & ROMANO, LLC
Marco S. Attisano
Pa. Id. No. 316736

429 Fourth Avenue, Suite 1705
Pittsburgh, PA 15219
(412) 336-8622

On behalf of the Pennsylvania Democratic Party
and James Brewster, Intervenor's

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing INTERVENORS' MOTION TO DISMISS was filed electronically on December 12, 2020. Notice of this filing will be sent to the parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Clifford B. Levine

Clifford B. Levine